

MINUTES OF BOARD MEETING

Monday, May 14, 2018, 10:00 a.m. to 12:40 p.m.
California Regional Water Quality Control Board
City of Calexico Council Chambers
608 Heber Ave
Calexico, CA 92231

1. Call Meeting to Order

Introduction

The California Regional Water Quality Control Board, Colorado River Basin Region, was called to order by Board Chair Nancy Wright at 10:00 a.m. on May 14, 2018 in Calexico, California. Chair Wright thanked Mayor Hurtado for hosting the Board's meeting.

Pledge of Allegiance

Roll Call (Board Members Only)

Nancy Wright, Buford Crites, Hidali Garcia, Ed Muzik, and Jayne Powell were present. Tom Davis was absent. The Board Clerk stated that a quorum was present.

State and Regional Board Staff Present:

Jose Angel, Katharine Buddingh, Naomi Kaplowitz, Mary Castañeda, Doug Wylie, Jeong-Hee Lim, Abid Khalaf, Adriana Godinez, and Terry Barnes.

Others Present

Maritza Hurtado, Mayor, City of Calexico
John Renison, Imperial County District 1 Supervisor
John Garcia, State Senator Ben Hueso's Office
Stella Jimenez, District Director for State Assemblymember Eduardo Garcia
Laura Estrada, Assemblymember Eduardo Garcia's Imperial Valley Office
Joel Cruz, U.S. Customs and Border Protection
Farah Diwan, U.S. Customs and Border Protection
Mike Matzke, NBCP Local 2554 President
Wayne Belzer, U.S. International Boundary & Water Commission (U.S. IBWC)
Michael Montgomery, U.S. Environmental Protection Agency (USEPA)
Esperanza Coolio, County of Imperial
Steve Bigley, Coachella Valley Water District (CVWD)
Shawn Haggerty, Best Best & Krieger LLP
Antonio Ortega, Imperial Irrigation District (IID)
Mike Pacheco, IID
Brian Stup, Michael Baker International
Kevin Mejia, Komite Civico del Valle
Martha Ponce, Komite Civico del Valle
Miguel Hernandez, Komite Civico del Valle
Astrid Calderas, La Union Hace La Fuerza (LUHLF)
Lillian Garcia, LUHLF
Ray Askins, Public

2. **Public Forum**

Mayor Hurtado welcomed the Board to Calexico and outlined some of the key work the City and its staff are doing to address the New River water quality problems. She also stated that she was looking forward to the New River tour.

3. **Approval of Minutes**

Minutes of March 8, 2018 Board Meeting

Minutes of April 12, 2018 Salt & Nutrients in Groundwater Workshop

Motion: Buford Crites moved, Ed Muzik seconded, and the motion was carried unanimously to adopt Minutes with corrections.

Uncontested Items

4. Order R7-2018-0010 – Waste Discharge Requirements Country Life MHPRV Asset Partners, L.P., Owner, Hector Munoz, D/B/A Munoz Wastewater Monitoring Services, Operator, Country Life Mobile Home and R.V. Park Wastewater Treatment Plant (Jeong-Hee Lim, WRCE, PhD, P.E.)

EO Jose Angel stated that staff prepared errata for the proposed permit and summarized that the errata responded to the Discharger's comments on the proposed effluent limitation for Copper.

Motion: Buford Crites moved, Jayne Powell seconded, and the motion was carried unanimously to adopt Board Order R7-2018-0012 with Errata.

Administrative Civil Liability Order

5. Order R7-2018-0016 – Settlement Agreement and Stipulations for Adoption of Order R7-2018-0016 in the Matter of Coachella Valley Water District (Doug Wylie, Senior WRCE, P.E.)

Chair Wright opened the hearing by indicating that this was an up or down vote on the Item. She also identified the members of the Advisory and Prosecution Teams. She then brought to the Board's attention the fundamental concerns that the Advisory Team had raised about the proposed Settlement and asked Jose Angel and Katharine Buddingh to elaborate on the concerns.

Mr. Angel explained that the Advisory Team disagreed with the Prosecution Team's assertion that the maximum liability available to the Board in this matter was \$20,000. He noted that the California Water Code provides the Board may assess penalties for this spill on both a per-gallon and per-day basis, but that the Prosecution Team was only using the per-day basis. He also expressed concern that the factor that the Prosecution Team had used for determining the potential for harm [to water quality] under the Enforcement Policy was too low in this case. Ms. Buddingh added that the rationale used by the Prosecution Team [to arrive at a \$20,000 maximum statutory liability] was flawed, because it did not account for the Board's discretion to assess penalties on both a per-gallon and per-day basis.

Naomi Kaplowitz, on behalf of the Prosecution Team, stated that the Board is not obligated to assess liability on both a per-day and per-gallon basis and that the Regional Water Staff was ready to address the other concerns raised. Mr. Angel responded that the problem was that the Board has discretion to assess liability on both a per-day and per-gallon basis, not whether it should assess penalties one way or the other. He also expressed concern that the proposed Settlement implicitly locked the Board into pursuing enforcement against the other responsible party (Desert

Recreation District) for the spill on a per gallon basis. Consequently, he also expressed reservations about making future Board enforcement contingent on the proposed Settlement and about the Board not having all of the facts and allegations against the Recreation District. Ms. Buddingh also expressed concern that the proposed Settlement did not explain the rationale for going after Desert Recreation District on a per-gallon basis, but not CVWD.

WRCE Abid Khalaf presented the Prosecution Team's report to support the proposed Settlement and Stipulated Order. He provided the Board with an overview of the location of the spill and the factors that triggered the spill. He stated that the spill occurred on June 3 and 4, 2017. The discharge was allegedly caused by the overfilling and subsequent collapse of the Desert Recreation District's First Tee of the Coachella Valley Golf Course Pond 3 in Palm Desert. He also answered questions from the Board and the Advisory Team. Ms. Kaplowitz indicated that the Prosecution Team and CVWD staff agreed to the final imposition of \$20,000 in liability against CVWD pursuant to Government Code section 11415.60. Mr. Wylie answered questions about the integrity and operation and maintenance of the CVWD's sewer collection system. He mentioned that he and staff from the State Water Board recently conducted an inspection of the sewer collection system and found it to be adequate.

Board member Muzik expressed support for the proposed Settlement. Vice Chair Crites indicated he was opposed to it, not just for the reasons stated by the Advisory Team, but also for other reasons—namely, some of the potential for harm factors used by the Prosecution Team. Mr. Crites added that the spill posed a great threat to the beneficial uses because people in the area access the Coachella Valley Stormwater Channel at that location, and that he has seen many people there, including Palm Desert High School students because the High School is adjacent to the area readily impacted by the spill.

Shawn Haggerty, counsel for the CVWD on this matter, also addressed the Board and expressed support for the Settlement. Steve Bigley of CVWD stated that his district responded immediately upon learning of the spill, and it focused on shutting down the flow in the collapsed pipe, which required significant effort. He also mentioned that CVWD was in support of the proposed Settlement.

Board Chair Wright expressed concern about the Board not having a complete picture of the incident and the absence of Desert Recreation District at the proceedings. Board member Powell asked for clarification on the proposed \$20,000 penalty. Ms. Buddingh responded that it was based on the Prosecution Team's use of the per-day basis only for calculating the minimum liability, not on the per-day and per-gallon bases. Ms. Garcia stated that she would like to hear all of the facts surrounding the spill. Ms. Powell stated that she agreed with the steps CVWD took to deal with the spill and felt that the Settlement would be acceptable to her by adding text to the proposed Settlement to the effect that additional liability on a per-gallon basis was considered. She asked Mr. Angel if that would address his concerns. He stated that it would not. Ms. Buddingh added that the Advisory Team was also concerned because the alleged \$33,808 in economic benefit [found in Attachment A] was not in fact [over] the statutory cap on penalties.

The Advisory Team again recommended that the Board reject the proposed Settlement for several reasons. They noted that details about the pending enforcement proceedings involving Desert Recreation District were unknown to the Board and its Advisory Team, and that there may be due process concerns because a representative of Desert Recreation District was not present at the hearing. Additional significant concerns raised included: (1) that the proposed Settlement did not properly calculate the maximum statutory liability available to the Board, and (2) that the proposed Settlement improperly characterized the threat of the spill to beneficial uses (i.e., potential for harm). Mr. Angel recommended that the matter be brought in totality before the Board, i.e., with all of the responsible parties for the spill present, so that the Board could make a better decision on what to assess and against whom. He clarified that the proposed enforcement against the CVWD and the

proposed enforcement against Desert Recreation District could be handled either concurrently or sequentially, but should be heard at the same Board meeting.

Motion: Hidali Garcia moved, Buford Crites seconded, and a motion was carried to continue the matter to the September 2018 Board meeting, to be heard in totality (i.e., concurrently and/or sequentially) with the related enforcement matter involving Desert Recreation District.

Member Muzik-No, Vice-Chair Crites-Yes, Member Powell-No, Member Garcia-Yes, Chair Wright-Yes, Approved by vote 3-2-0.

Informational Items

6. State Water Resources Control Board Activities Update [*Katharine Buddingh*]

Ms. Buddingh reported that the State Water Board has posted a revised Recycled Water Policy for public review and comment, and that Mr. Esquivel has been confirmed as State Water Board Member.

7. Colorado River Basin Water Board Executive Officer's Report [*Jose L. Angel, P.E.*]

Mr. Angel stated that he would be attending the Management Coordinating Committee meeting in Riverside later this month, and will be attending other meetings this week in Imperial Valley. He also reported that State Water Board already posted and published the ad to recruit the new Board Executive Officer. He also stated that Chair Wright, Ms. Godinez, and he attended the Binational Technical Committee meeting in Mexicali on May 3, 2018, and that the Board will be receiving the bi-monthly written report on the staff's key activities presently.

8. Colorado River Basin Water Board Member Comments

Board member Powell stated that she and Vice Chair Crites attended the Mojave Water Agency's (MWA) Technical Advisory Committee meeting earlier in the month. Board member Muzik invited the Board members to a tour of the High Desert Water District's (HDWD) Water Reclamation Plant as part of or right after the June Board meeting, which will be held in Yucca Valley. Vice Chair Crites stated that he also attended the mini tour sponsored by MWA on May 2. Board member Powell suggested a workshop on penalty calculations/assessment. Mr. Angel replied that training on that subject was scheduled for May 24 for the staff, but that Board members are welcome and he would forward the training agenda to the Board.

9. Colorado River Basin Water Board Chair's Report

Chair Wright brought to the attention of the Board the upcoming Water Quality Coordinating Committee (WQCC) meeting in October. Board member Muzik suggested including the WQCC meeting agenda [assistance to] economically disadvantaged communities. He also stated that HDWD was having a Special Meeting on May 23, 2018 at 5:00 pm about Mr. Angel's contributions for Yucca Valley.

10. New River Information Workshop

- A. Staff Report [*Jose L. Angel, P.E.*]
- B. Input from Elected Officials
- C. Input from Public Agencies
 - Federal and Binational Agencies (TBD)
 - Imperial County (TBD)
 - Imperial Irrigation District (TBD)
 - City of Calexico (TBD)

- NGOs (TBD)
- D. Input from Members of the Public
- E. Board member discussion and direction

Supervisor Renison thanked the Board for holding its meeting in Calexico and for all of its work to address New River water quality problems. He also acknowledged the Memorandum of Understanding (MOU) that the County, IID, and City of Calexico signed for the operation and maintenance of the proposed projects for the New River in Calexico. He also mentioned his membership with the Salton Sea Authority and efforts to address problems relating to the Salton Sea, and thanked the Board for its efforts on that front as well.

Mr. Angel presented the Regional Water Board's Staff Report. He focused on the progress made to address New River pollution from Mexico through the implementation of the Mexicali I and Mexicali II Binational Projects. He also discussed the additional work that needs to take place to address close to \$80 million worth of sewage infrastructure problems in Mexicali, which are resulting in bypasses of raw sewage into the New River again. While the federal government decides what to do about that problem, he explained that USEPA enabled CESPM to acquire equipment to prevent bypasses of raw sewage into the River, and that CESPM will get all of the equipment this month. Additionally, Mr. Angel mentioned that while the equipment should prevent most bypasses that are now occurring, unfortunately, it will not prevent all of them. He then called upon Mr. Brian Stup from Michael Baker International (MBI) to provide the Board with an update on Phase 1 of the New River Improvement Project (NRIP) recommendations for Calexico.

Mr. Stup explained that his company was selected by the State Water Board to complete the design (engineering plans and specifications) and environmental documentation for the proposed trash screen, conveyance system, and pump-back system for the New River in the Calexico area. He stated that the project is on schedule and presented the preliminary alignment for the conveyance and pump-back systems and the location for the trash screen. He also discussed the ongoing coordination with key stakeholders (e.g., IID, County, City, and Homeland Security) and said he expected that Phase 1 will be completed by October 2018.

Mr. Angel recommended that the Board continue working cooperatively with Mexico through the Binational Technical Committee for the New River/Mexicali Sanitation Program and continue to urge the USEPA, U.S. IBWC, and NADBank to make Mexicali a priority for binational funding to address the \$80-million sewage infrastructure problem.

The following speakers also addressed the Board during the workshop:

- Stella Jimenez thanked the Board for holding the workshop in Calexico and expressed Assemblymember Garcia's commitment to the NRIP and Salton Sea. She highlighted his past and current legislative efforts to secure funding not just for the New River, but also for the Salton Sea, including approximately \$20 million for the New River.
- Mayor Hurtado emphasized how the New River impacts Calexico and its residents. She also mentioned that the City is very fortunate to have Miguel Figueroa as part of its staff. Mr. Figueroa was previously involved [as Executive Director of the Calexico New River Committee] and now works on behalf of the City of Calexico to address New River water quality problems, including working in a leadership capacity to make the New River Parkway a reality. She also remarked on the progress made to address New River problems that she has witnessed during the last eight years.
- Michael Montgomery stated that USEPA has been working cooperatively with Mexico under the 1983 La Paz Agreement, and that the Border Infrastructure Program came along with the passage of NAFTA. Under NAFTA, USEPA became responsible for providing technical oversight for binational projects, and that both the U.S. and Mexico share in the costs for the

projects. He also showed the Board the New River water quality improvements after Las Arenitas WWTF went online in Mexicali, remarked about Mexico's regulatory efforts to deal with the discharges of waste from the slaughterhouses, and his agency's recent funding of the equipment for CESPMM to prevent bypasses of raw sewage into the New River.

- Wayne Beltzer discussed how the IBWC was formed and the U.S. IBWC's role in addressing New River pollution—mainly, to bring recognition to binational problems and get both countries to discuss and to cooperatively implement solutions to those problems. He also mentioned the binational efforts to collect water quality data to make decisions and showed New River water quality at various locations near the United States-Mexico border. Moreover, he discussed efforts to eliminate discharges of untreated waste from the slaughterhouses in Mexicali.
- Joel Cruz, on behalf of U.S. Customs and Border Protection (CBP), shared with the Board a video that showed how people get in the New River in order to enter the United States. He also discussed the threats that New River water quality poses to CBP's agents, who have to patrol and intervene in that area to deal with smugglers and people in the New River. Mr. Angel commented that he, CalEPA staff, and Mr. Stup have already had consulting meetings with CBP about Phase 1, and that Phase 1 would help address the health threat posed by the New River.
- Antonio Ortega stated that IID is very supportive of the Phase 1 project, and he thanked the Chair for attending the MOU signing ceremony in October. He has been coordinating with the State Water Board's contractor MBI on Phase 1.
- Miguel Hernandez emphasized Comité Civico del Valle's commitment and support for the NRIP.
- Astrid Calderas stated she felt that the Board was not addressing the concerns of the residents in the west side of Calexico. She invited the Board to go door by door in the west side to talk to the residents.

Closed Session

There was no closed session held.

Adjournment of Board Meeting

The meeting was adjourned at 12:40 p.m., and the Board then proceeded to the mini tour of the New River in Calexico.